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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA - RENO**

9 FRIENDLY CAPITAL PARTNERS, L.P., a) Case No. 3:06-CV-00250-BES-VPC
10 California Limited Partnership,)
11 Plaintiff,) Related to 00056-PMP-VPC
12 vs.) BASE FILE; & 3:06-CV-00145-PMP-VPC
13 DENNIS MONTGOMERY, BRENDA)
14 MONTGOMERY, and the MONTGOMERY)
15 FAMILY TRUST, a California trust, and) ANSWER AND COUNTERCLAIM OF
16 DOES 1 through 10, individually.) DENNIS MONTGOMERY, BRENDA
17 Defendants) MONTGOMERY, AND THE
18) MONTGOMERY FAMILY TRUST
19)
20)
21)
22)
23)
24)
25)
26)
27)
AND ALL RELATED MATTERS.)

ANSWER

1 Defendants Dennis Montgomery, Brenda Montgomery, and the Montgomery Family Trust,
2 (hereinafter "Defendants") answer the Complaint as follows:

PARTIES

- 3 1. Defendants lack information or belief sufficient to enable them to admit or deny the
4 allegations of this Paragraph.
- 5 2. Defendants deny the allegations of this Paragraph.
- 6 3. Defendants deny the allegations of this Paragraph.

GENERAL ALLEGATIONS

- 7 4. Defendants deny the allegations of this Paragraph.
- 8 5. Defendants lack information or belief sufficient to enable them to admit or deny the
9 allegations of this Paragraph.
- 10 6. Defendants lack information or belief sufficient to enable them to admit or deny the
11 allegations of this Paragraph.
- 12 7. Defendants lack information or belief sufficient to enable them to admit or deny the
13 allegations of this Paragraph, except that Defendants deny the truth of the contents of
14 Exhibit D7.
- 15 8. Defendants deny the allegations of this Paragraph.
- 16 9. Defendants lack information or belief sufficient to enable them to admit or deny the
17 allegations of this Paragraph, except that Defendants deny the truth of the contents of Exhibits F and
18 G.
- 19 10. Defendants deny the allegations of this Paragraph.
- 20 11. Defendants deny the allegations of this Paragraph.
- 21 12. Defendants deny the allegations of this Paragraph.

FIRST CLAIM FOR RELIEF

(Foreclosure of Security - NRS 104.9601 et seq.)

- 22 13. Defendants reallege their answer to Paragraphs 1 through 12 as though fully set forth
23 herein.

- 1 14. Defendants deny the allegations of this Paragraph.
 - 2 15. Defendants deny the allegations of this Paragraph
 - 3 16. Defendants lack information or belief sufficient to enable them to admit or deny the
allegations of this Paragraph, especially regarding the status of the collateral company,
and the remaining allegations are a conclusion of law.
 - 4
 - 5 17. Defendants deny the allegations of this Paragraph.
 - 6

SECOND CLAIM FOR RELIEF

(Breach of Contract)

THIRD CLAIM FOR RELIEF

(Breach of the Implied Covenant of Good Faith and Fair Dealing)

- 19 24. Defendants reallege their answer to Paragraphs 1 through 23 as though fully set forth
20 herein.

21 25. Defendants deny the allegations of this Paragraph.

22 26. Defendants deny the allegations of this Paragraph.

23 27. Defendants deny the allegations of this Paragraph.

24 28. Defendants deny the allegations of this Paragraph.

25 29. Defendants deny the allegations of this Paragraph.

26 30. Defendants deny the allegations of this Paragraph.

27 31. Defendants deny the allegations of this Paragraph.

28 32. Defendants deny the allegations of this Paragraph.

1 FOURTH CLAIM FOR RELIEF

2 (Unjust Enrichment)

- 3 33. Defendants reallege their answer to Paragraphs 1 through 32 as though fully set forth
4 herein.
- 5 34. Defendants deny the allegations of this Paragraph.
- 6 35. Defendants deny the allegations of this Paragraph.
- 7 36. Defendants deny the allegations of this Paragraph.

8

9 AFFIRMATIVE DEFENSES

10 FIRST AFFIRMATIVE DEFENSE

11 The Complaint and the purported claims for relief alleged therein fail to state facts
12 sufficient to constitute a claim upon which relief can be granted.

13 SECOND AFFIRMATIVE DEFENSE

14 Plaintiff is barred from recovery by its, and its agents, own fraudulent conduct and
15 misrepresentations, including but not limited to recession of the alleged notes by fraud,
16 misrepresentations and or mistake.

17 THIRD AFFIRMATIVE DEFENSE

18 Plaintiff is barred from recovering under the Complaint by the doctrine of unclean
19 hands.

20 FOURTH AFFIRMATIVE DEFENSE

21 Plaintiff is estopped by virtue of its, and its agents, including Warren Trepp and Douglas
22 Frye's words and conduct from asserting the claims as set forth in the complaint.

23 FIFTH AFFIRMATIVE DEFENSE

24 The loss, if any, sustained by Plaintiff was proximately caused and contributed to by the
25 negligence, fraud, improper conduct, breach of contract or intervening acts of Plaintiff and or its
26 agents, including Trepp and Frye.

27 SIXTH AFFIRMATIVE DEFENSE

28 Plaintiff failed to comply with conditions precedent. In particular, in consideration for the

1 Montgomery's contribution of valuable technology contained on CD No. 1, which is all that they
2 contributed to eTreppid, and therefore Trepp and FCP agreed to give the Montgomerys 50% of
3 eTreppid and not dilute their share, which they violated.

4 SEVENTH AFFIRMATIVE DEFENSE

5 There was a lack of consideration and a failure of consideration for the notes alleged in the
6 Complaint.

7 EIGHTH AFFIRMATIVE DEFENSE

8 The alleged note(s) are null and void by fraud in the inception; or null and void
9 because of the fraud of the plaintiff and its agents. Alternately, the alleged note(s) are null and
10 void by uncertainty or lack of mutuality of obligations.

11 NINTH AFFIRMATIVE DEFENSE

12 Plaintiff is barred from any recovery by virtue of its and its agents' breach of fiduciary
13 duties, and is barred by the Business Judgment Rule.

14 TENTH AFFIRMATIVE DEFENSE

15 Plaintiff's damages as alleged in the Complaint, if any such damages were sustained, are
16 the result of plaintiff and its agents' failure to exercise reasonable care and caution.

17 ELEVENTH AFFIRMATIVE DEFENSE

18 Plaintiff's recovery under the Complaint, if any, is subject to set-off and/or recoupment in
19 the amounts owed by plaintiff to defendants.

20 TWELFTH AFFIRMATIVE DEFENSE

21 Plaintiff has failed in its duty to mitigate and minimize damages, if any.

22 THIRTEENTH AFFIRMATIVE DEFENSE

23 Plaintiff lacks standing to maintain this action.

24 FOURTEENTH AFFIRMATIVE DEFENSE

25 Plaintiff has breached his covenant of good faith and fair dealing and is therefore barred
26 from recovering any amounts.

27 FIFTEENTH AFFIRMATIVE DEFENSE

28 Plaintiff's recovery is barred by the doctrines of res judicata and collateral estoppel.

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 Plaintiff freely and voluntarily assumed the risk of injury and damage alleged in the
3 Complaint with full knowledge and appreciation of its magnitude, and that this assumption of the
4 risk was the proximate cause of the alleged damage, if any, sustained by plaintiff. Therefore,
5 plaintiff is barred from recovering any damages, if any were in fact sustained.

6 SEVENTEENTH AFFIRMATIVE DEFENSE

7 Plaintiff has delayed unreasonably in asserting the claims set forth in the Complaint, and
8 the claims are thus barred by the doctrine of laches.

9 EIGHTEENTH AFFIRMATIVE DEFENSE

10 Defendant asserts all defenses available to a trust and under the Probate Code.

11 NINETEENTH AFFIRMATIVE DEFENSE

12 Plaintiff has waived the underlying claims set forth in the Complaint and/or has acquiesced
13 to the alleged actions giving rise to the alleged claims.

14 TWENTIETH AFFIRMATIVE DEFENSE

15 Plaintiff has no legal writings to enforce its alleged notes.

16 ALL AFFIRMATIVE DEFENSES RESERVED

17 Defendants reserve their rights to assert each and every affirmative defense that
18 might be appropriate and available, and failure to specifically allege any such affirmative defense
19 in this answer is not intended as a waiver or abandonment.

20 WHEREFORE, Defendants pray for judgment as follows:

- 21 1. Judgment be entered in favor of Defendants;
22 2. Plaintiffs take nothing by reason of the Complaint;
23 3. Defendants be awarded attorneys' fees and costs;
24 4. Such further and other relief as the Court may deem just and appropriate.

25
26 **COUNTERCLAIM OF DENNIS MONTGOMERY, BRENDA MONTGOMERY, AND**
27 **THE MONTGOMERY FAMILY TRUST**

28 Counterclaimants Dennis Montgomery, Brenda Montgomery and the Montgomery Family

1 Trust, (hereinafter “Counterclaimants”) hereby allege against Counterdefendants Friendly Capital
 2 Partners, L.P., eTreppid Technologies, LLC, (formerly called Intrepid Technologies, LLC), Warren
 3 Trepp, Douglas Frye, and Does 1 - 10 inclusive, the below Claims for Relief.

4

5

INTRODUCTION

6 1. Friendly Capital Partners LP (“FCP”) was formed in 1993. FCP is the alter ego of
 7 Warren Trepp and Douglas Frye. FCP’s initial general partner was Trepp, who was the chief trader
 8 for Michael Milken during the largest junk bond scandal in U.S. history. California attorney Frye
 9 assisted Trepp in forming FCP and other business entities controlled by Trepp and Frye. Defendant,
 10 eTreppid Technologies, LLC., is a Nevada Limited Liability Company, the managing member of
 11 which is Defendant, Warren Trepp, and is the alter ego of Counter Defendants, Warren Trepp,
 12 Douglas J. Frye and Friendly Capital Partners, L.P.

13 2. These counterclaims arise out of the fraud, misrepresentations, and deceit Trepp
 14 employed to unlawfully take financial advantage of many, including Crosscomplainants. The
 15 Complaint brought by Trepp alter ego FCP is another example of Trepp’s misconduct. FCP is one
 16 of many diversion companies owned by Trepp controlled by Trepp and Frye. These other diversion
 17 companies include Fremont Trusts, Friendly Capital, 755 Trademark Drive, Total Finance and
 18 Leasing, Ascentia Capital.

19 3. Trepp’s FCP and other diversion companies were formed to enable Trepp to deceitfully
 20 channel money to Trepp thereby diluting Mr. Montgomery’s share of eTreppid and steal Mr.
 21 Montgomery’s money - all in breach of Trepp’s fiduciary duty to eTreppid stockholder Dennis
 22 Montgomery.

23 4. FCP’s Complaint, alleging amounts due under certain alleged promissory notes, is
 24 without merit. For example, the amounts due under the January 14, 1999 promissory note and by
 25 the first modification of December 21, 2000 have been repaid in full. And the alleged second
 26 modification dated December 28, 2005 along with the Guaranty dated the next day were not agreed
 27 to nor executed by Dennis Montgomery - they are forgeries. Additionally, January 14, 1999 note
 28 and its December 21, 2000 modification were breaches of eTreppid, Trepp, and Frye’s agreements

1 with and fiduciary duties to Montgomery.

2 5. FCP's Complaint is nothing more than an unlawful retaliation by Trepp and Frye for
 3 other pending litigation regarding the ownership of extremely valuable copyrighted computer
 4 software that Dennis Montgomery developed. eTreppid, Trepp, and Frye are attempting to obtain
 5 Montgomery's intellectual property in order to fulfill certain United State Government defense
 6 contracts. eTreppid and Trepp obtained these contracts with the assistance of former United States
 7 Congressman and current Nevada Governor James Gibbons, after showering Gibbons with reported
 8 and unreported campaign contributions, currently the subject of a criminal investigation by the
 9 Public Integrity Division of the Depart of Justice in Washington, D.C. In the pending civil
 10 litigation between Trepp and Dennis Montgomery, Montgomery claims the majority shareholder of
 11 eTreppid, Trepp, used his majority position to squeeze out, dilute, and misappropriate vast sums of
 12 money from shareholder Dennis Montgomery. Mr. Montgomery also claimed, and the court agreed,
 13 Trepp attempted to convert Mr. Montgomery's technology by lying to a Reno FBI agent. This FBI
 14 agent acted as Trepp's "agent" and "unwitting pawn" who then raided Dennis Montgomery's home
 15 and storage units in "callous disregard" of Mr. Montgomery's constitutional rights. In a scathing
 16 opinion against the FBI, and Trepp indirectly, the court found the FBI raids to be unconstitutional.
 17 (Order, Nov. 28, 2006, docket #130, cv:06-263, U.S. Dist. Ct., Reno). FCP's current complaint
 18 against Mr. Montgomery is nothing more than Trepp's retaliation for Mr. Montgomery exposing
 19 Trepp's manipulation and deceit. Such actions have been reported in virtually every major
 20 newspaper in Nevada and across the country.

PARTIES

21
 22 6. Counterclaimant Dennis Montgomery is an individual who resides in the State of
 23 Washington, and is a computer scientist and the inventor and owner of valuable technology that
 24 spawned this action. He is also the co-trustee of the Montgomery Family Trust (the "Trust").

25
 26 7. Counterclaimant Brenda Montgomery is the wife of Dennis Montgomery and also resides
 27 in the State of Washington, and is the co-trustee of the Montgomery Family Trust.

28 8. The Trust is a citizen of the State of Washington, and is the owner of the copyrights

1 | discussed above.

2 9. Counterdefendant Friendly Capital Partners, L.P., is, upon information and belief, a
3 California limited partnership.

4 10. Counterdefendant Trepp is, upon information and belief, an individual who resides in
5 Washoe County, Nevada and is the majority shareholder in eTreppid Technologies, and the manager
6 and agent of Friendly Capital Parners, L.P.

7 11. Counterdefendant eTreppid Technologies, LLC is, upon information and belief a
8 Nevada limited liability company, with its usual place of business in Washoe County, Nevada.

9 12. Counterdefendant Frye is, upon information and belief, an individual residing in
10 California and a member of the State Bar of California. Frye has been Trepp's lawyer since Trepp's
11 days as Michael Milken's chief trader. Frye is the attorney for eTreppid Technologies and Friendly
12 Capital Partners and, upon information and belief, is an owner of an interest in these two
13 companies. Counterclaimants are informed and believe Frye drafted most of the documents
14 attached as exhibits to FCP's Complaint. Upon information and belief, Frye is the agent for service
15 of process, and agent and partner for Friendly Capital Partners, L.P. Doug Frye is a California
16 resident.

13. Upon information and belief, Counterdefendants Sue Perez is a Nevada resident.

18 14. Counterclaimants are unaware of the true names and capacities of Counterdefendants
19 sued herein as DOES 1 through 10, inclusive, and therefore sue said Counterdefendants under such
20 fictitious names. Counterclaimants are informed and believe that such fictitious Counterdefendants
21 are responsible in some manner for the events and happenings herein referred to, and proximately
22 caused the damage to Counterclaimants as herein alleged. Counterclaimants will seek leave to
23 amend this counterclaim to allege their true names and capacities when the same have been
24 ascertained.

JURISDICTION AND VENUE

27 15. The Court has jurisdiction pursuant to 28 U.S.C. §1332 (diversity) and over the state
28 law claims pursuant to 28 U.S.C. §1337 (supplemental jurisdiction). Venue is proper pursuant to 28

1 U.S.C. §1441(b).

2

3 **FACTUAL ALLEGATIONS**

4 16. Dennis Montgomery is a computer scientist, inventor, and software developer. In or
 5 around 1982, Mr. Montgomery developed certain pattern recognition software, which he
 6 copyrighted at the U.S. Copyright Office. After the registration of these copyrights, Mr.
 7 Montgomery developed derivative works based on the pattern recognition technology originally
 8 copyrighted between 1982 and January 1987 (the “Derivative Works”). Those uniquely important
 9 Derivative Works were fully developed prior to 1998 and are the exclusive property of the Trust.

10 17. In or around September 1998, Mr. Montgomery and Counterdefendant Trepp, formed
 11 Counterdefendant eTreppid. Pursuant to the “Contribution Agreement” dated September 28, 1998
 12 between Mr. Montgomery and Brenda Montgomery as co-trustees of the Montgomery Family Trust,
 13 and Dennis Montgomery, an individual, on one hand, and Trepp as the Chairman of Intrepid
 14 Technologies, LLC, on the other hand, Mr. Montgomery received an “interest in eTreppid equal to
 15 a fifty percent (50%) percentage of interest.”

16 18. Pursuant to the “Contribution Agreement” dated September 28, 1998, between Trepp,
 17 Dennis Montgomery and the Trust, in exchange for a fifty-percent interest in eTreppid set aside to
 18 Montgomery, the Trust contributed specific technology to Intrepid that is identified in paragraph
 19 1.2.1 of the Contribution Agreement, which is the “the software compression technology contained
 20 on that certain Software Compression Engine Development Program contained on CD No. 1.”

21 19. The formation documents were drafted by attorney Frye.

22 20. Trepp agreed to put capital into the company, but never did fulfill his part of the
 23 agreements, and refused to produce the books of the company.

24 21. Significantly, because the Trust owned other technology, Paragraph 1.3 of the
 25 Contribution Agreement provides the Trust is expressly not “contributing, transferring or
 26 conveying to Intrepid under this agreement or by any other means, nor is Intrepid acquiring from
 27 [the Trust] any other tangible and intangible assets of’ the Trust or Montgomery.

28 22. Thus, pursuant to the express terms of the Contribution Agreement, eTreppid only

1 acquired the software compression technology contained on CD No. 1 and nothing else, which is
 2 also what the Nevada U.S. District Court has ruled. (Order, Nov. 28, 2006, docket #130, cv:06-263,
 3 U.S. District Court, Nevada-Reno).

4 23. After Mr. Montgomery formed this partnership, Trepp, and attorney Frye made
 5 representations to Mr. Montgomery regarding the financial condition of eTreppid to induce
 6 Montgomery to sign the promissory note dated January 14, 1999 and the first modification, dated
 7 December 21, 2000. Both documents are attached as exhibits to FCP's Complaint. Unbeknownst
 8 to Mr. Montgomery, Trepp and Frye's representations were false and misleading, constituted
 9 fraudulent conduct, were in breach of the Contribution Agreement, and were in breach of Trepp and
 10 Frye's fiduciary duties to Mr. Montgomery.

11 24. Based upon Trepp and Frye's representations, and in reliance thereon, Mr. Montgomery
 12 signed the January 14, 1999 promissory note and the December 21, 2000 modification agreement.
 13 Unbeknownst to Mr. Montgomery, those documents were then used by Trepp and Frye to begin
 14 dilution of Mr. Montgomery's ownership interest in eTreppid. Trepp's majority interest was then
 15 used by Trepp to obtain favorable financial treatment for himself as a majority shareholder at the
 16 expense of Mr. Montgomery.

17 25. For example, Trepp washed all of this private expenses, including private jet flights for
 18 he and his wife, through eTreppid. Attorney Frye also benefitted from his misrepresentations
 19 because he would dishonestly triple bill eTreppid, which also diluted Mr. Montgomery's share of
 20 the company.

21 26. Trepp has employed illegal aliens for his home and business for approximately the last
 22 ten years. These employees, Alex and Roxanne, have been paid their salaries and living expenses,
 23 in cash taken from the eTreppid and other Trepp-related business entities, thereby defrauding
 24 eTreppid's investors and the IRS. Frye, along with some U.S. government officials, have obtained
 25 illegal travel documents for these employees. Trepp's personal relationship with federal and state
 26 officials has allowed this kind of illegal activity to continue.

27 27. Trepp required Dennis Montgomery to sell eTreppid stock to Trepp's friends, and then
 28 Trepp required Mr. Montgomery to give a major portion of the proceeds from those sales back to

1 Trepp. Additionally, Mr. Montgomery informed and believes that Trepp gave to his friend and
2 attorney, Frye, a significant portion of Mr. Montgomery's member share interest in eTreppid
3 Technologies, LLC.

4 28. FCP agreed to hire Mr. Montgomery in 2001 to build a predictive stock market analysis
5 system. Trepp agreed to pay Montgomery \$10 million for the system if it was able to meet certain
6 goals. Montgomery met those goals in late 2005.

7 29. Dennis Montgomery created stock trading charts in 2003, 2004, and 2005. In late 2005,
8 Trepp told Montgomery to alter 2003, 2004, and 2005 stock trading charts to reflect results on
9 specific days, other than the results that were actually produced. Trepp told Montgomery that Trepp
10 and others had made "trades" in oil and airline stocks on those days. Trepp was looking to
11 backdate these charts to stock trades he had made on certain dates.

12 30. Montgomery believes that Trepp had been making specific stock trades in the stock
13 market based on intelligence information Trepp was obtaining while under contract to various
14 government agencies. Trepp was using that information to make stock trades through various
15 friends and "brokerage" houses. In mid 2005, Trepp told Montgomery that Trepp was going to buy
16 a small brokerage house, which Trepp could control. Trepp told Montgomery Millennium Capital
17 in New York was under SEC investigations, and Trepp could not make these special trades
18 anymore. Trepp decided to buy Ascentia Capital in Reno, Nevada in 2005, and asked Frye to find a
19 way to buy controlling interest without having to disclose Trepp's interest in this firm.

20 31. In mid 2005, Trepp transferred millions of dollars out of eTreppid into FCP, and later
21 into Ascentia Capital for the purpose of making these special trades based upon intelligence
22 information Trepp obtained while under contract to various government agencies. Trepp opened at
23 least four trading accounts at Ascentia Capital for the propose of trading stocks in early 2006.
24 Trepp asked Mr. Montgomery to sign the signature cards for these accounts, and Montgomery
25 refused. Mr. Montgomery notified the U.S. Government of his concerns regarding Trepp's stock
26 trades in January 2006. To this date, no one from the U.S. Government has asked anything of
27 Montgomery regarding Trepp's stock trading activities. Trepp told Montgomery that Trepp was
28 going to create a new limited liability company that had a chemical name and open bank accounts in

1 Zurich to facilitate these trades. Montgomery is informed and believes that Trepp transferred
 2 significant sums of money to an account in Zurich, from the assets of eTreppid and perhaps Friendly
 3 Capital as well.

4 32. As agents of their alter ego companies, FCP and eTreppid, Trepp and Frye
 5 misrepresented the financial condition of eTreppid as being stable and profitable, however denying
 6 Montgomery any financial records of the company to confirm that fact. Trepp and Frye also
 7 withheld important information from Mr. Montgomery in order to get him to sign two notes. That
 8 information included the improper transfer of funds out of eTreppid to themselves and to other
 9 entities. Furthermore, Frye had a conflict of interest because he represented Trepp and FCP when
 10 Frye approached Mr. Montgomery with signature pages for some, but not all, of the notes, and
 11 advised Montgomery to sign these signature pages without access to the documents as a whole.

12 33. Mr. Montgomery paid these two notes in full, because he did not know at the time that
 13 Trepp and Frye had misrepresented to him the financial state of eTreppid, committed fraud, were in
 14 the process of breaching the Contribution Agreement, and breached their fiduciary duties.

15 34. In or around 2003, eTreppid began sublicensing the Derivative Works of Montgomery's
 16 intellectual property to various entities, including the United States Government and collecting
 17 licensing fees for the sublicenses. eTreppid was never granted a license to the Derivative Works by
 18 Montgomery, or pay any compensation to Mr. Montgomery for the use of Montgomery's
 19 intellectual property. While Trepp repeatedly promised to pay compensation to Montgomery for the
 20 used of his property, Trepp ultimately refused to do so.

21 35. At no time did any of the counterdefendants have a written license to use or exploit the
 22 Montgomery Trust's derivative works as required by 17 U.S.C. § 204(a). As a result, at best,
 23 eTreppid only can claim (if anything) an oral, non-exclusive license to use the derivative works.
 24 And although the Trust denies it granted any oral nonexclusive license to eTreppid, any such oral
 25 license was terminated by the Trust on January 19, 2006, orally and by letter dated January 25,
 26 2006.

27 36. When eTreppid failed and refused to cease exploitation of the derivative works and
 28 refusal to account for any income obtained as a result of its unlicensed exploitation of the

1 Derivative works, Mr. Montgomery commenced an action against Trepp and eTreppid, with
 2 counterclaims against Montgomery.

3 37. FCP, an alter ego of Trepp and Frye, then filed its Complaint against Montgomery on
 4 April 23, 2007, alleging foreclosure, breach of contract, breach of the implied covenant of good faith
 5 and fair dealing, and unjust enrichment.

6 38. FCP's actions, through its agents Trepp and Frye, in forging Dennis Montgomery's
 7 signatures on the December 28, 2005 second modification and Guaranty agreement, thereby
 8 fraudulently diluted Mr. Montgomery's interest in eTreppid by deceitful and fraudulent means. The
 9 alleged witness to this document is "Altan M. Bora." Mr. Bora is Trepp's brother-in-law, who has a
 10 felony conviction of insurance fraud and was accused of forging insurance documents.
 11 Approximately ten other people were in eTreppid's office that same day and any one of those
 12 individuals, many with U.S. Government security clearance, could have signed that document, but
 13 did not

14 39. Because of the aforementioned bad faith of Trepp and Frey acting as agents of FCP, Mr.
 15 Montgomery is entitled to pierce the corporate veil of FCP and other Trepp-related business entities.
 16

17 FIRST CLAIM FOR RELIEF

(Fraud And Misrepresentation Against All Counterdefendants)

19 40. Counterclaimants reallege the allegations contained in the foregoing paragraphs as
 20 though fully set forth herein.

21 41. In or around 1999, Dennis Montgomery entered into a partnership with Intrepid, the
 22 predecessor to eTreppid, and Trepp.

23 42. During the course of that partnership with eTreppid, FCP, Trepp and Frye orally and in
 24 writing misrepresented and fraudulently represented the financial condition of eTreppid in order to
 25 induce and deceive Mr. Montgomery to sign two notes, which Mr. Montgomery believes are the
 26 notes referenced in FCP complaint and are dated January 14, 1999 and December 21, 2000.
 27 Because Mr. Montgomery did not know FCP, Trepp, and Frye were misrepresenting and
 28 fraudulently representing the financial condition of the company and other matters, he paid off those

1 notes.

2 43. Trepp, Frye, and eTreppid represented in the Contribution Agreement and verbally at the
 3 time in Sept of 1998 that only the technology on "CD No. 1" was being conveyed. However, they
 4 lied then and again recently by admitting under oath, in the preliminary injunction hearing in a
 5 related lawsuit, that before the agreement was signed and at the time that he was receiving
 6 additional pattern recognition technology for video. This misrepresentation is now a basis for Mr.
 7 Montgomery's claims.

8 44. Trepp, Frye, and eTreppid represented at the time of the deal in September of 1998 and
 9 in so many words in the Operating Agreement that they and Mr. Montgomery would always be
 10 50/50 partners as long as Montgomery served as Chief Technology Officer and developed the
 11 technology on CD No. 1 for the business and that Montgomery's ownership interests would not be
 12 changed by anything.

13 45. Trepp, Frye, and eTreppid represented that Trepp and eTreppid would not take money
 14 out of the company for any personal business or other businesses of Trepp - Trepp has over forty
 15 other businesses and this was one of Montgomery's concerns. Trepp then proceeded to do just that
 16 - a million dollars alone for airplane charters - and then used these money transfers to dilute Mr.
 17 Montgomery's share. This was a fraudulent scheme typical of Trepp's modus operandi.

18 46. Trepp, Frye, and eTreppid represented verbally and in the Operating Agreement and in
 19 the Contribution Agreement that Mr. Montgomery could see and review the books and records
 20 whenever Montgomery wanted; however, Montgomery has never been permitted to review any
 21 books. This concealment or suppression of the facts in the records was part of the fraud,
 22 particularly in the dilution process.

23 47. Additionally, Counterdefendants or others forged Mr. Montgomery's signature on at
 24 least the second modification December 28, 2005 and the Guaranty agreement dated December 29,
 25 2005.

26 48. Montgomery reasonably relied on these misrepresentations.

27 49. As a direct and proximate result of Counterdefendants' fraudulent conduct and
 28 misrepresentations, Mr. Montgomery has suffered damages, including attorneys' fees to bring this

1 | action, in an amount to be determined according to proof at trial.

2 50. Counterdefendants' perpetuation of their fraud was intended by Counterdefendants to
3 cause injury to Counterclaimants or has been despicable conduct that has been carried on by
4 Counterdefendants with oppression, fraud, and malice with the intent to willfully injure, harass, vex,
5 and annoy Counterclaimants and with a conscious disregard for Counterclaimants' rights.
6 Therefore, Counterclaimants seek punitive damages against Counterdefendants.

SECOND CLAIM FOR RELIEF

(Breach Of Contract, Dennis Montgomery Against All Counterdefendants)

10 51. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
11 though fully set forth herein.

52. Between 2003 and 2005 FCP and Trepp entered into an oral contract with Mr. Montgomery for Mr. Montgomery to create a stock market analysis system in exchange for \$10,000,000.

15 || 53. Mr. Montgomery performed as specified by the contract.

16 54. FCP and Trepp failed to perform as specified by the contract.

17 55. As a result of FCP and Trepp's breach of the contract, Mr. Montgomery suffered an
18 economic loss of at least \$10,000,000.

THIRD CLAIM FOR RELIEF

(Breach Of Fiduciary Duty, Dennis Montgomery Against All Counterdefendants)

22 56. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
23 though fully set forth herein.

24 57. By virtue of Counterdefendants' relationship to Mr. Montgomery, Counterdefendants
25 owed Mr. Montgomery a fiduciary duty of trust and loyalty; and through their aforementioned
26 actions Counterdefendants breached that duty.

27 58. As a proximate result of Counterdefendants' breach of their fiduciary duties, Mr.
28 Montgomery has suffered damages, including attorneys' fees to bring this action, in an amount to

1 be determined according to proof at trial.

2 59. Counterdefendants' breach of their fiduciary duty was intended by Counterdefendants to
3 cause injury to Counterclaimants or has been despicable conduct that has been carried on by
4 Counterdefendants with oppression, fraud, and malice with the intent to willfully injure, harass, vex,
5 and annoy Counterclaimants and with a conscious disregard for Counterclaimants' rights.
6 Therefore, Counterclaimants seek punitive damages against Counterdefendants.

FOURTH CLAIM FOR RELIEF

(Constructive Fraud, Dennis Montgomery Against All Counterdefendants)

10 60. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
11 though fully set forth herein.

12 61. Counterdefendants' breach of their legal fiduciary duty to Mr. Montgomery constitutes
13 constructive fraud.

14 62. As a proximate result of Counterdefendants' constructive fraud, Mr. Montgomery has
15 suffered damages, including attorneys' fees to bring this action, in an amount to be determined
16 according to proof at trial

FIFTH CLAIM FOR RELIEF

**(Breach Of Implied Covenant Of Good Faith And Fair Dealing Against All
Counterdefendants)**

21 63. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
22 though fully set forth herein.

23 64. Counterdefendants agreed and implicitly entered into a covenant to not do anything to
24 deprive Mr. Montgomery of the benefits of the Contribution Agreement and his ownership interest
25 in eTreppid.

26 65. As a result of the Counterdefendants' aforementioned conduct, they breached that
27 covenant when they intentionally diluted Mr. Montgomery's 50% share in eTreppid, through their
28 misrepresentations, fraudulent conduct, breach of contract, and breach of their fiduciary duties.

1 66. As a proximate result of Counterdefendants' breach of their implied covenants of good
2 faith and fair dealing, Mr. Montgomery has suffered damages, including attorney fees to bring this
3 action, in an amount to be determined according to proof at trial.

SIXTH CLAIM FOR RELIEF

(Unjust Enrichment, Dennis Montgomery Against All Counterdefendants)

7 67. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
8 though fully set forth herein.

9 68. Mr. Montgomery conferred a value on the Counterdefendants by contributing his
10 valuable technology contained on CD No. 1, and the Counterdefendants did not set aside to Mr.
11 Montgomery his 50% interest in eTreppid.

12 69. It would be inequitable and unjust to allow Counterdefendants to retain the benefit
13 conferred upon them without requiring them to deliver to Montgomery his expected 50% ownership
14 interest in eTreppid.

15 70. Counterdefendants have been unjustly enriched in an amount in excess of \$1,000,000 the
16 exact amount to be proven at trial, and Counterdefendants should be ordered to convey the amount
17 of said unjust enrichment to Mr. Montgomery according to proof at trial.

SEVENTH CLAIM FOR RELIEF

(Intentional Interference With Prospective Economic Advantage, Dennis Montgomery Against All Counterdefendants)

71. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
though fully set forth herein.

24 72. Economic relationships existed between Mr. Montgomery and FCP, and between
25 Montgomery and eTreppid, and these relationships contained probable future economic benefits or
26 advantages to Mr. Montgomery.

27 73. Counterdefendants knew of these economic relationships.

28 74. Counterdefendants intentionally engaged in wrongful conduct as alleged above and said

1 conduct was designed to disrupt Montgomery's relationships with FCP and eTreppid.

2 75. These economic relationships between Montgomery and FCP and eTreppid were
3 actually interfered with or disrupted.

4 76. As a proximate result of Counterdefendants' interference with Montgomery's
5 relationships with FCP and eTreppid, Montgomery was damaged.

6 77. Counterdefendants' intentional interference with Montgomery's economic relationships
7 with FCP and eTreppid was intended by Counterdefendants to cause injury to Counterclaimants or
8 has been despicable conduct that has been carried on by Counterdefendants with oppression, fraud,
9 and malice with the intent to willfully injure, harass, vex, and annoy Counterclaimants and with a
10 conscious disregard for Counterclaimants' rights. Therefore, Counterclaimants seek punitive
11 damages against Counterdefendants.

EIGHTH CLAIM FOR RELIEF

14 (Negligent Interference With Prospective Economic Advantage, Dennis Montgomery Against
15 All Counterdefendants)

16 78. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
17 though fully set forth herein.

18 79. Economic relationships existed between Mr. Montgomery and FCP, and between
19 Montgomery and eTreppid, and these relationships contained probable future economic benefits or
20 advantages to Mr. Montgomery.

21 80. Counterdefendants knew of these economic relationships.

22 81. Counterdefendants negligently engaged in wrongful conduct as alleged above and said
23 conduct disrupted Montgomery's relationships with FCP and eTreppid.

24 82. It was reasonably foreseeable that this negligent conduct would interfere or disrupt these
25 economic relationship if Counterdefendants failed to exercise due care.

26 83. Counterdefendants were negligent and failed to exercise due care in relationship with
27 Montgomery's economic relationships with FCP and eTreppid.

84. These economic relationships between Montgomery and FCP and eTreppid were

1 I actually interfered with or disrupted.

2 85. As a proximate result of Counterdefendants' interference with Montgomery's
3 relationships with FCP and eTreppid, Montgomery was damaged, specifically Montgomery lost in
4 whole or in part the economic benefit or advantage from the economic relationship.

NINTH CLAIM FOR RELIEF

(Identity Theft, Dennis Montgomery Against All Counterdefendants)

8 86. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
9 though fully set forth herein.

10 87. Counterdefendants or their agents forged Mr. Montgomery's signature as alleged above.

88. By forging Mr. Montgomery's signature, Counterdefendants converted Mr.
Montgomery's identity for their own personal gain.

13 89. As a proximate result of Counterdefendants' forgery of Mr. Montgomery's signature,
14 | Montgomery was damaged.

15 90. Counterdefendants' conversion of Mr. Montgomery's identity was intended by
16 Counterdefendants to cause injury to Counterclaimants or has been despicable conduct that has been
17 carried on by Counterdefendants with oppression, fraud, and malice with the intent to willfully
18 injure, harass, vex, and annoy Counterclaimants and with a conscious disregard for
19 Counterclaimants' rights. Therefore, Counterclaimants seek punitive damages against
20 Counterdefendants.

TENTH CLAIM FOR RELIEF

(Civil Conspiracy Against All Counterdefendants)

24 91. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as
25 though fully set forth herein.

26 92. Counterclaimants are informed and believe, and thereon allege that by their conduct and
27 alleged above, Counterdefendants knowingly and willfully conspired and agreed among themselves
28 to implement and maintain a scheme to dilute Mr. Montgomery's interest and profits from his

1 relationships with eTreppid and FCP, and to misappropriate money away from Montgomery and
2 into the hands and coffers of Counterdefendants.

3 93. Counterdefendants, in furtherance of this conspiracy, made material misrepresentations
4 to Mr. Montgomery and suppressed and withheld material information from Montgomery.

5 94. As a proximate result of Counterdefendants' wrongful acts alleged herein Montgomery
6 has been damaged.

7 95. Counterdefendants' conspiracy was intended by Counterdefendants to cause injury to
8 Counterclaimants or has been despicable conduct that has been carried on by Counterdefendants
9 with oppression, fraud, and malice with the intent to willfully injure, harass, vex, and annoy
10 Counterclaimants and with a conscious disregard for Counterclaimants' rights. Therefore,
11 Counterclaimants seek punitive damages against Counterdefendants.

ELEVENTH CLAIM FOR RELIEF

(Accounting)

14 96. Mr. Montgomery realleges the allegations contained in the foregoing paragraphs as if
15 fully set forth herein.

16 97. Trepp and Frye have repeatedly denied Montgomery access to the financial records of
17 eTreppid, intending thereby to conceal from Montgomery, a member, the actual financial condition
18 of the company, their transfers therefrom, withdrawals and payments to themselves and to others, to
19 which Montgomery was entitled.

20 98. Montgomery is entitled to an accounting from all Counter Defendants of their receipt,
21 treatment and disposition of his payments made to them, including payments made on the
22 promissory note dated January 14, 1999 and the first modification, dated December 21, 2000.

PRAYER

WHEREFORE, Counterclaimants pray judgment against all Counterdefendants:

26 1. Judgment in this action be granted in favor of Counterclaimants and against
27 Counterdefendants in an amount to be determined according to proof at trial, together with interest
28 thereon from September 1998.

1 2. For reasonable attorneys' fees in an amount to be determined according to proof at
2 trial for this action;

3 3. For costs of this action;

4 4. The court make a binding declaration of the rights, duties, status, and other legal
5 relations of the parties;

5. The court declare Counterdefendants are, and each of them severally is, liable to
Counterclaimants to reimburse for all amounts paid by Counterclaimants in satisfaction of
judgments against it, and interest and cost thereon; and that Counterdefendants are, and each
severally is, liable to Counterclaimants for their costs, including legal fees;

10 6. That any amount may be deemed due and owing under the Complaint by Plaintiffs
11 against Defendants be applied as a setoff to the damages awarded to Counterclaimants in the instant
12 action;

13 7. For punitive damages for the willful, malicious, intentional conduct alleged herein;

14 8. For an accounting from Counterdefendants for all financial operations of eTreppid
15 and their connection therewith. An Accounting from all Counterdefendants
16 regarding the receipt of all funds transferred and paid by Montgomery to either of
17 them;

18 ||| 9. For such other and further relief as the court may deem proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Counterclaimants hereby demand a trial by jury in this action of any issues triable of right by a jury.

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24

Respectfully Submitted,

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26 | DATED: June 8, 2007

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by: /s/

Ronald J. Logar, Esq.

Attorney for Dennis Montgomery, Brenda
Montgomery, and the Montgomery Family Trust.

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CERTIFICATE OF SERVICE

I, Stephanie Onorato, declare: I am an employee in the City of Reno, County of Washoe, State of Nevada, employed by the Law Office of Logar & Pulver, PC, located at 225 S. Arlington Avenue, Suite A, Reno, Nevada 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with the Law Office of Logar & Pulver's practice for the collection of mail, delivery of its hand-deliveries, their process of facsimile's and the practice of mailing.

1 On June 8, 2007, I caused the foregoing document to be delivered to the following persons
2 and/or entities:

3 Sent Via U.S. Regular Mail:

4 Mr. Jerry M. Snyder, Esq.
5 Hale Lane Peek Dennison and Howard
5441 Kietzke Lane, Second Floor
6 Reno, NV 89511

7
8 /s/
9 Stephanie Onorato
10 Legal Assistant to the
11 Law Office of Logar & Pulver, PC

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